

EDMUND G. BROWN JR., Attorney General  
of the State of California  
JOSE R. GUERRERO, State Bar No. 97276  
Supervising Deputy Attorney General  
CATHERINE E. SANTILLAN  
Senior Legal Analyst  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
Telephone: (415) 703-5579  
Facsimile: (415) 703-5480

Attorneys for Complainant

**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1H 2008 699

GREGORY PHILLIPS  
117 Knightsbridge Court  
American Canyon, CA 94503

**A C C U S A T I O N**

Respiratory Care Practitioner License No. 14671

Respondent.

Complainant alleges:

**PARTIES**

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about October 2, 1991, the Respiratory Care Board issued Respiratory Care Practitioner License Number 14671 to Gregory Phillips (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2009, unless renewed.

**JURISDICTION**

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2           4.       Section 3710 of the Code states: “The Respiratory Care Board of  
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter  
4 8.3, the Respiratory Care Practice Act].”

5           5.       Section 3718 of the Code states: “The board shall issue, deny, suspend,  
6 and revoke licenses to practice respiratory care as provided in this chapter.”

7           6.       Section 3750 of the Code states:

8           “The board may order the denial, suspension or revocation of, or the imposition of  
9 probationary conditions upon, a license issued under this chapter, for any of the following  
10 causes:

11           “(d) Conviction of a crime that substantially relates to the qualifications,  
12 functions, or duties of a respiratory care practitioner. The record of conviction or a  
13 certified copy thereof shall be conclusive evidence of the conviction.

14           “(g) Conviction of a violation of any of the provisions of this chapter or of any  
15 provision of Division 2 (commencing with Section 500), or violating, or attempting to  
16 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to  
17 violate any provision or term of this chapter or of any provision of Division 2  
18 (commencing with Section 500).”

19           7.       Section 3752 of the Code states:

20           “A plea or verdict of guilty or a conviction following a plea of nolo contendere  
21 made to a charge of any offense which substantially relates to the qualifications,  
22 functions, or duties of a respiratory care practitioner is deemed to be a conviction within  
23 the meaning of this article. The board shall order the license suspended or revoked, or  
24 may decline to issue a license, when the time for appeal has elapsed, or the judgment of  
25 conviction has been affirmed on appeal or when an order granting probation is made  
26 suspending the imposition of sentence, irrespective of a subsequent order under Section  
27 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to  
28 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the

1 accusation, information, or indictment.”

2 8. California Code of Regulations, title 16, section 1399.370, states:

3 “For the purposes of denial, suspension, or revocation of a license, a crime or act  
4 shall be considered to be substantially related to the qualifications, functions or duties of  
5 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to  
6 perform the functions authorized by his or her license or in a manner inconsistent with the  
7 public health, safety, or welfare. Such crimes or acts shall include but not be limited to  
8 those involving the following:

9 “(a) Violating or attempting to violate, directly or indirectly, or assisting or  
10 abetting the violation of or conspiring to violate any provision or term of the Act.

11 “(c) Conviction of a crime involving driving under the influence or reckless  
12 driving while under the influence.”

### 13 COST RECOVERY

14 9. Section 3753.5, subdivision (a) of the Code states:

15 "In any order issued in resolution of a disciplinary proceeding before the board,  
16 the board or the administrative law judge may direct any practitioner or applicant found to have  
17 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the  
18 investigation and prosecution of the case."

19 10. Section 3753.7 of the Code states:

20 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall  
21 include attorney general or other prosecuting attorney fees, expert witness fees, and other  
22 administrative, filing, and service fees."

23 11. Section 3753.1 of the Code states:

24 "(a) An administrative disciplinary decision imposing terms of probation may  
25 include, among other things, a requirement that the licensee-probationer pay the monetary costs  
26 associated with monitoring the probation."

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1 FIRST CAUSE FOR DISCIPLINE

2 (Substantially-related Conviction)

3 12. Respondent is subject to disciplinary action under code sections 3750(d)  
4 and 3752, 3750(g) and CCR 1399.370(a) and (c) [substantially-related conviction] in that he was  
5 convicted of violating Vehicle Code section 23152(b) [driving under the influence of alcohol  
6 with a blood alcohol content of .08% or higher.] The circumstances are as follows:

7 13. On or about May 18, 2008, at approximately 2:30 p.m., Napa Police  
8 Officer Holliday was dispatched to investigate a non-injury collision. He contacted the driver of  
9 the vehicle (identified as Respondent via his California driver's license.) Officer Holliday  
10 observed that Respondent's eyes were bloodshot, he had a strong odor of alcohol about his  
11 person, and appeared extremely intoxicated. He asked Respondent to exit his vehicle, and he  
12 observed Respondent sway as he stood. Respondent was unable to keep his feet together as  
13 directed. Respondent told the officer that he was unable to perform field sobriety tests because  
14 he had a degenerative disc disease in his back.

15 14. Respondent agreed to take a preliminary alcohol screening test (PAS).  
16 The test results indicated a level above .400, indicating that Respondent's blood alcohol content  
17 was extremely high and over the normal range of the device.

18 15. Officer Holliday arrested Respondent for violating Vehicle Code section  
19 23152(a) [driving under the influence of alcohol] and Vehicle Code section 23152(b) [driving  
20 under the influence of alcohol with a blood alcohol content of .08% or higher.] Respondent  
21 chose to take a breath test, and prior to the time he took the test, Officer Holliday searched his  
22 vehicle and found a partially consumed bottle of mouthwash and a smaller empty bottle of  
23 mouthwash.

24 16. Officer Holliday transported Respondent to jail, where he administered a  
25 breathalyzer test. The results indicated Respondent had an alcohol content of .35%, .32% and  
26 .35%.

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17. On or about May 23, 2008, a criminal complaint titled *People of the State of California vs. Gregory Richard Phillips*, case no. CR140812 was filed in Superior Court for Napa County. Count 1 charged Respondent with a violation of Vehicle Code section 23152(a) [driving under the influence of alcohol] and Count 2 charged a violation of Vehicle Code section 23152(b) [driving under the influence of alcohol with a blood alcohol content of .08% or higher.] The complaint alleged the breath test results of .33/.35% and contained a special allegation of Vehicle Code section 23578 for a blood alcohol content of .15% or higher.

18. On or about July 10, 2008, Respondent was convicted on his plea of no contest to Count 2, a misdemeanor violation of Vehicle Code section 23152(b) [driving under the influence of alcohol with a blood alcohol content of .08% or higher] and Vehicle Code section 23578. Count 1 was dismissed.

19. Respondent was sentenced to five years summary probation, ordered to serve four days in jail with credit for one day served, pay fines, enroll in and complete a nine month drinking driver program.

20. Therefore, respondent's license is subject to discipline based on his conviction of Vehicle Code section 23152(b) [driving under the influence of alcohol with a blood alcohol content of .08% or higher] and Vehicle Code section 23578 which is in violation of code sections 3750(d) and 3752, 3750(g) and CCR 1399.370(a) and (c).

## PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking or suspending Respiratory Care Practitioner License Number 14671, issued to Gregory Phillips.

2. Ordering Gregory Phillips to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;

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3. Taking such other and further action as deemed necessary and proper.

DATED: January 12, 2009

Original signed by: \_\_\_\_\_  
STEPHANIE NUNEZ  
Executive Officer  
Respiratory Care Board of California  
Department of Consumer Affairs  
State of California  
Complainant

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